

SHB 1041 - S AMD
By Senator

1 Beginning on page 3, line 19, strike all of section 5 and insert
2 the following:

3 "NEW SECTION. **Sec. 5.** A new section is added to chapter 23B.10
4 RCW to read as follows:

5 (1) Unless the articles of incorporation (a) specifically prohibit
6 the adoption of a bylaw pursuant to this section, (b) alter the vote
7 specified in RCW 23B.07.280(2), or (c) allow for or do not exclude
8 cumulative voting, a public company may elect in its bylaws to be
9 governed in the election of directors as follows:

10 (i) Each vote entitled to be cast may be voted for, voted against,
11 or withheld for one or more candidates up to that number of candidates
12 that is equal to the number of directors to be elected but without
13 cumulating the votes, or a shareholder may indicate an abstention for
14 one or more candidates;

15 (ii) To be elected, a candidate must have received the number,
16 percentage, or level of votes specified in the bylaws; provided that
17 holders of shares entitled to vote in the election and constituting a
18 quorum are present at the meeting. Except in a contested election as
19 provided in (c)(v) of this subsection, a candidate who does not receive
20 the number, percentage, or level of votes specified in the bylaws but
21 who was a director at the time of the election shall continue to serve
22 as a director for a term that shall terminate on the date that is the
23 earlier of (A) the date specified in the bylaw, but not longer than
24 ninety days from the date on which the voting results are determined
25 pursuant to section 6(2) of this act, or (B) the date on which an
26 individual is selected by the board of directors to fill the office
27 held by such director, which selection shall be deemed to constitute
28 the filling of a vacancy by the board to which RCW 23B.08.100 applies;

29 (iii) A bylaw adopted pursuant to this section may provide that
30 votes cast against and/or withheld as to a candidate are to be taken
31 into account in determining whether the number, percentage, or level of

1 votes required for election has been received. Unless the bylaw
2 specifies otherwise, only votes cast are to be taken into account and
3 a ballot marked "withheld" in respect to a share is deemed to be a vote
4 cast. Unless the bylaws specify otherwise, shares otherwise present at
5 the meeting but for which there is an abstention or as to which no
6 authority or direction to vote in the election is given or specified,
7 are not deemed to be votes cast in the election;

8 (iv) The board of directors may select any qualified individual to
9 fill the office held by a director who did not receive the specified
10 vote for election referenced in (c)(ii) of this subsection; and

11 (v) Unless the bylaw specifies otherwise, a bylaw adopted pursuant
12 to this subsection (1) shall not apply to an election of directors by
13 a voting group if (A) at the expiration of the time fixed under a
14 provision requiring advance notification of director candidates, or (B)
15 absent such a provision, at a time fixed by the board of directors
16 which is not more than fourteen days before notice is given of the
17 meeting at which the election is to occur, there are more candidates
18 for election by the voting group than the number of directors to be
19 elected, one or more of whom are properly proposed by shareholders. An
20 individual shall not be considered a candidate for purposes of this
21 subsection (1)(c)(v) if the board of directors determines before the
22 notice of meeting is given that such individual's candidacy does not
23 create a bona fide election contest.

24 (2) A bylaw containing an election to be governed by this section
25 may be repealed or amended:

26 (a) If originally adopted by the shareholders, only by the
27 shareholders, unless the bylaw otherwise provides; or

28 (b) If adopted by the board of directors, by the board of directors
29 or the shareholders."

EFFECT: The election standards are broadened so as to allow the
board or shareholders latitude to set the standard for election in the
bylaw. The standard could be a majority vote or it could be a modified
plurality. An incumbent director cannot continue to serve beyond 90
days after failing to receive the required vote. A technical
correction is made to a cross-reference.

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